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Mailed: 9/23/03

Paper No. 12  
ejs

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Titan Technologies International, Inc.

Serial No. 76/212,284

Barry L. Kelmachter of Bachman & LaPointe, P.C. for Titan Technologies International, Inc.

Matthew J. Pappas, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Seeherman, Hairston and Bucher, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Titan Technologies International, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register TITAN TECHNOLOGIES as a trademark for the following goods and services:

power tools, namely, power wrenches  
(Class 7);

wholesale distributorships featuring  
power tools, namely, power wrenches;  
on-line retail store services featuring  
power tools, namely, power wrenches  
(Class 35); and

technical consultation in the field of  
power tools, namely power wrenches  
(Class 42).

Applicant has disclaimed exclusive rights to the word  
TECHNOLOGIES. The application, which was filed on February  
20, 2001, is based on an asserted bona fide intention to  
use the mark in commerce.

Registration has been refused pursuant to Section 2(d)  
of the Trademark Act, 15 U.S.C. 1052(d), on the ground that  
applicant's mark so resembles the mark TITAN TOOLS and  
design, as shown below (TOOLS disclaimed), registered for  
"hand tools and instruments, as follows: oil field hand  
tools--namely, tongs, wrenches, swivels, flange spreaders,  
pipe dollies, and wire line guides" in Class 8,<sup>1</sup> that, if is  
used on or in connection with applicant's identified goods  
and services, it is likely to cause confusion or mistake or  
to deceive.<sup>2</sup>

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<sup>1</sup> Registration No. 1,154,616, issued May 19, 1981; Section 8  
affidavit accepted; Section 15 affidavit received; renewed.

<sup>2</sup> Another registration owned by the same entity, No. 1,150,837  
for TITAN for essentially the same goods, was originally cited by  
the Examining Attorney, but this registration subsequently  
expired.



Both applicant and the Examining Attorney have filed appeal briefs.<sup>3</sup> Applicant did not file a reply brief, and did not request an oral hearing.

On September 8, 2003 this Board had occasion to consider an appeal brought by applicant in connection with its application to register the mark TITAN TECHNOLOGIES INTERNATIONAL, INC. for the same goods as those in the present application. That application, too, had been refused registration by the Examining Attorney based on the cited registration for TITAN TOOLS and design. We affirmed the refusal of registration of that mark, and for essentially the same reasons, we affirm the refusal in the subject application.

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<sup>3</sup> Both applicant and the Examining Attorney have included with their briefs numerous exhibits which are already of record, e.g., copies of numerous third-party registrations and copies of excerpts taken from the NEXIS database. It is unnecessary to resubmit with briefs all the exhibits which were previously submitted, and such a practice is discouraged by the Board as it needlessly clutters the file.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the marks, they are very similar. Both begin with the identical word TITAN, followed by words which do not have source-identifying significance. In the case of registrant's mark, the word TOOLS is generic for the goods identified in the cited registration. The mark also includes a minor design element, but it is a "carrier" of a relatively common shape, and consumers are not likely to look to it as indicating the source of the goods. Rather, it is the word TITAN, the only arbitrary portion of the mark, that is likely to be noted and remembered. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). Nor is the slight stylization of the words in the cited registration sufficient to distinguish the marks. The type font in which the words are displayed is not unusual; more importantly, because applicant has applied to register its

mark as a typed drawing, it could depict its mark in a similar typestyle.

As for applicant's mark, the word TECHNOLOGIES is descriptive, a fact which applicant has acknowledged by disclaiming it. Again, it is the arbitrary word TITAN that has the strongest source-identifying significance. We also note that in a quote for equipment, submitted by applicant as Exhibit B to its request for reconsideration and its brief, its torque wrench is referred to by the word TITAN alone, and its other products, as well as the company name, are referred to as TITAN per se, e.g., "TITAN-6 Automatic High Speed Low Clearance Hydraulic Torque Wrench Head," "Titan 2" Slim Line Swing Link that Ratchets Custom Made to specific standards," "TITAN PROVIDES YOU WITH UNMATCHED, [sic] POWER, ACCURACY, RELIABILITY, AND ENGINEERING INNOVATIONS," "Titan Unit Price." Just as applicant itself appears to use TITAN per se as an abbreviation for its trademark and trade name, consumers are likely to do the same.

Although marks must be compared in their entireties, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). As discussed above,

in applicant's mark and the cited mark the word TITAN is the dominant element to which we accord greater weight. Thus, the similarities in the initial word TITAN in both marks outweigh the differences in the generic and descriptive words.

Applicant argues that the marks have different connotations, and that applicant's mark suggests a corporate name while TITAN TOOLS suggests a large tool. We disagree that consumers would ascribe different connotations to the mark, such that they would regard them as indicating different sources for the goods. Rather, consumers are likely to view tools bearing the mark TITAN TOOLS as coming from the same source as tools bearing the mark TITAN TECHNOLOGIES, with TITAN TOOLS as a variant of the TITAN TECHNOLOGIES mark.

Applicant has asserted that TITAN is a weak mark which is entitled to a limited scope of protection. In support of this position, it has submitted a number of third-party registrations for goods and services in Classes 7 and 42. However, an examination of these registrations shows that none is for goods or services that are particularly similar to either those in the cited registration or in applicant's application. For example, the first four registrations submitted by applicant as exhibit A are for "indexing

machines and conveyors for use in the precision movement of parts to be machined along an assembly line" (Registration No. 2,362,976); "spray guns for coating materials" (Registration No. 2,301,520); "hoists and winches" (Registration No. 2,276,419); and "portable airless and high volume low pressure pumps for spraying paint and applying coatings" (Registration No. 1,927,149). Applicant argues that "many of the goods covered by [the third-party] registrations, such as spray guns, hoists and winches, pumps, motors, machine parts, and lathes, will be used by the same people who use Applicant's goods and services and by the people who use the goods identified in the [cited] registration. Brief, pp. 4-5. However, it should be noted that in many instances the goods listed in the third-party registrations are for specific types of goods or industries, e.g., spray guns for coating materials, portable airless and high volume low pressure pumps for spraying paint and applying coatings; machine parts, namely hydraulic and pneumatic cylinders for use in the steel and aluminum industry; airless piston pumps for use with spray guns for coating materials; and computer controlled lathes. It is not clear to us that these goods would be used by the same people who use oil field hand tools, nor is it clear that the industries which use such goods would use power

wrenches. In any event, there are clear differences between the goods listed in the third-party registrations and the goods and services in applicant's application and the cited registration. The differences in the services in the third-party registrations are even greater, e.g., "testing and analysis of motor oils to detect the presence of contaminants..." (Registration No. 2,418,585); "designing computer hardware and software to the order and/or specifications of others...(Registration No. 1,316,136); "providing temporary facilities to business and government for disaster recovery" (Registration No. 2,138,769).

Thus, although third-party registrations can be used in the manner of dictionary definitions to show that a term has a significance in a particular field, see *Mead Johnson & Company v. Peter Eckes*, 195 USPQ 187 (TTAB 1977), or that a registered mark is weak, see *Conde Nast Publications Inc. v. Miss Quality, Inc.*, 180 USPQ 149 (TTAB 1973), in this case the goods and services in the third-party registrations are so different that they are not probative of either point. With respect to tools of the type identified in applicant's application and the cited registration, we find that TITAN is not a weak term, and the scope of protection to be accorded the cited



registration extends to the goods and services identified in applicant's application.

With respect to the goods, applicant's goods are power wrenches while the cited registration is for, inter alia, oil field hand tools, namely wrenches. The Examining Attorney has submitted several third-party registrations which show that parties have adopted a single mark for both power wrenches and hand tool wrenches. See Registration No. 2,540,609, registered for, inter alia, power-driven wrenches, power tools namely wrenches, and hand tools namely wrenches; Registration Nos. 2,526,026 and 2,523,451 for, inter alia, power tools namely air impact wrenches and hand tools namely wrench sets; and Registration No. 2,438,395 for, inter alia, power tools namely impact wrenches and air ratchet wrenches and hand tools namely wrenches. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993).

The Examining Attorney has also submitted numerous excerpts of articles from "The Oilman," "Oil and Gas Journal" and "Offshore" taken from the NEXIS database which

indicate that power wrenches are used in oil fields, the same venue in which the registrant's hand tools are used. For example, a February 26, 2001 article in "Oil and Gas Journal" about slant rig, shallow-drilling operations discusses power wrenches, and states that "the derrickman operates a hydraulic power wrench for tubulars." Applicant has acknowledged that its goods may be sold to oil field companies and workers.<sup>4</sup>

In view of this evidence, we find that applicant's goods and those of the registrant are related, and that they may be sold to or encountered by the same classes of consumers.

Applicant has asserted that its goods are expensive, and has submitted evidence that a hydraulic torque head can be \$4,000 or more. Applicant has also stated that, as part of a sale, its dealer or independent representative needs to demonstrate the tools. In addition, typically special items will require a price quotation, and will have to be specially manufactured.

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<sup>4</sup> "Applicant's goods ... are sold to a wide variety of companies and individuals and are not limited to oil field companies and workers." Brief, p. 7. The fact that applicant's goods may also be sold to customers that are not involved in the oil industry, or that registrant's goods include hand tools other than wrenches, does not obviate the likelihood of confusion. It is a sufficient basis to find likelihood of confusion if some of the respective goods are similar and are sold to the same classes of consumers.

We accept applicant's position that its goods are expensive and will be purchased with care. However, as the Examining Attorney points out, even careful and sophisticated purchasers are not immune from confusion as to the source of goods, particular where, as here, the goods of both applicant and registrant can be sold to the same class of purchasers for use in oil field applications. Thus, although purchasers may well notice the slight differences in the marks, they are not likely to ascribe the differences to differences in the sources of the goods, but will view the marks as variants which both indicate a single source for the goods. In saying this, we have considered applicant's argument that as part of the purchase of the registrant's goods the "tools are demoed to make sure they are capable of meeting the customer's oilfield needs." Brief, p. 7. While we accept applicant's view that this is the case in some instances (see the discussion with respect to applicant's Class 42 services, infra), there is nothing inherent in the nature of (hand tool) wrenches for oil field use that would always require them to be personally demonstrated by a dealer or representative of the registrant.

Accordingly, we find that if applicant were to use the applied-for mark in connection with its goods, confusion would be likely.

As for applicant's "technical consultation in the field of power tools, namely power wrenches," applicant itself has stated that, with respect to the registrant's identified hand tools, "customers must be trained on the use of their tools by representatives of the company selling the tools." Therefore, by applicant's own acknowledgement, technical consultation is, to some extent, part of the process of buying and/or using hand tools. Consumers who purchase the registrant's wrenches and either are aware of or avail themselves of this service are likely to assume, upon seeing the mark TITAN TECHNOLOGIES in connection with technical consultation for power wrenches, that the services emanate from the same source.

We also find that confusion would be likely if applicant were to use its mark in connection with "on-line retail store services featuring power tools, namely power wrenches" (Class 35). The relatedness between goods and on-line retail store services featuring those goods is obvious. Here, of course, registrant's wrenches are hand tools rather than power wrenches. However, because of the relatedness of power wrenches and hand tool wrenches

discussed above, and because virtually all items are now sold on-line, consumers are likely to assume that there is a sponsorship or association between hand tool wrenches sold under the mark TITAN TOOLS and applicant's identified on-line retail store services rendered under the mark TITAN TECHNOLOGIES.

Finally, to the extent that there is any doubt on the issue of likelihood of confusion, we follow the well-established principle that such doubt must be resolved against the newcomer or in favor of the registrant, who is the prior user of the mark. See *In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

Decision: The refusal of registration is affirmed.